

APPEAL NO. 040334  
FILED APRIL 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 22, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter, but is entitled to SIBs for the fifth and sixth quarters. The appellant (carrier) appeals the hearing officer's determinations that the claimant is entitled to SIBs for the fifth and sixth quarters, contending that those determinations are not supported by sufficient evidence. The claimant asserts that sufficient evidence supports the hearing officer's determinations on the fifth and sixth quarters. There is no appeal of the hearing officer's decision that the claimant is not entitled to SIBs for the fourth quarter.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The carrier appeals the hearing officer's findings in favor of the claimant on the direct result and good faith criteria for SIBs entitlement for the fifth and sixth quarters. Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. The medical reports from the claimant's treating doctor and the claimant's testimony sufficiently support the hearing officer's finding that the claimant's underemployment during the qualifying periods for the fifth and sixth quarters was a direct result of the claimant's impairment.

With regard to the good faith criterion, Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Rule 130.102(d)(1) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work.

According to the claimant's Applications for [SIBs] (TWCC-52) for the fifth and sixth quarters, the claimant documented job contacts during the qualifying periods for the fifth and sixth quarters. The claimant testified that he was hired to collect rent for a property during the qualifying period for the fifth quarter and continued to work for that employer and also began lawn mowing for a second employer during the qualifying period for the sixth quarter. Those employers wrote letters verifying the claimant's employment. The treating doctor's last Work Status Report (TWCC-73) in evidence

indicated that the claimant should be off work due to his compensable injury from \_\_\_\_\_, through an unknown date. The last carrier required medical examination report dated December 5, 2002, and the accompanying TWCC-73, indicated that the claimant was functioning at a light or moderate duty level and that he could work eight hours a day with a 25-30 pound lifting restriction. The hearing officer found that during the qualifying periods for the fifth and sixth quarters, the claimant's employment was relatively equal to his ability to work and that he made a good faith effort to obtain employment commensurate with his ability to work. The hearing officer concluded that the claimant is entitled to SIBs for the fifth and sixth quarters. Although there is conflicting evidence in this case, we conclude that the hearing officer's findings on the direct result and good faith criteria for SIBs entitlement for the fifth and sixth quarters, and the hearing officer's determinations that the claimant is entitled to SIBs for the fifth and sixth quarters are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Michael B. McShane  
Appeals Panel  
Manager/Judge